

DAR COUNCIL HIGHLIGHTS

STATUS OF PART 45 REWRITE

Negotiations are ongoing between Acquisition Reform, OFPP, OSD and NASA to resolve some significant issues, which include:

Subcontractor Liability - GSA concerned that current version of the rewrite does not provide as much coverage of subcontractor liability as the current FAR does.

Exemptions DOD and NASA think they have from screening process - GSA can grant waivers of the "special tooling and special test equipment" screening requirement under the Fed Property Mgmt Regulation. Need to reconcile their ability to withdraw waivers with the way it is addressed in the FAR.

NASA's perspective on "as is" equipment - coverage on contractors' expenses changed in current version of the rewrite to state no increase in price or fee, but NASA is concerned that the contractor could make these charges as "direct cost."

AR's alternative approach to Government property - Includes coverage on "bailment," which is not included in the team's rewrite version. Other newly defined terms in the AR proposal include capital asset, capitalization threshold, stipulated value, and high-risk property.

Terminology - Lack of consensus among agencies on terminology used in property disposal section.

CONTRACT BUNDLING

The Small Business Administration published its proposed rule on "contract bundling" in the Federal Register January 13, 1999 (Vol. 64, No. 8.). Closing date for comments was March 15, 1999. The FAR case (#97-306), established to implement Sections 411 417 of the 1997 Small Business Reauthorization Act, is on hold pending publication of SBA's final rule.

SIMPLIFIED ACQUISITION PROCEDURES, DFARS 213 REWRITE (DFARS Case 97D306) Final rule published January 15, 1999 to update guidance on simplified acquisition procedures for consistency with recent FAR Part 13 revisions, published in FAC 97-03.

VALUE ENGINEERING CHANGE PROPOSALS, FAR CASE 97-031

On 14 Jan 99, the DAR Council agreed to a proposed rule which extends the cap on contractor share of savings, extends the maximum share period, extends the contractor's maximum share of collateral savings, and allows calculation of savings on the basis of time.

RANDOLPH-SHEPPARD FAR CASE: A joint meeting was held on January 25, 1999 to discuss major concerns and problems experienced with the applicability of the Randolph-Sheppard Act. Agencies and organizations represented included:

- OSD
- Small Business
- Department of Education
- Army
- Air Force
- Navy

At a December 14, 1998 speech by Vice President Gore, he expressed concern about programs to benefit people with disabilities, recognizing that the Randolph-Sheppard Act has benefited the blind the most.

Ms. Dee Lee, OFPP Administrator authorized establishment of a working group involving concerned parties (OSD, DOE, Small Business and JWOD) for the purpose developing an implementation strategy. In view of the disconnect between a recent arbitration in Hawaii and the recently issued OSD OGC opinion, Army is pursuing a legislative change. OSD will support Army's legislative proposal.

Until such time as the working group releases results of its study, OSD's senior leadership is resolving how to handle the FAR case.

SUSPENSION OF THE PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESSES (SDBs): The Director of Defense Procurement has suspended the use of the price evaluation preference for small disadvantaged businesses in DOD procurements as prescribed in FAR 19.11. This suspension was executed because DOD exceeded the established 5% SDB goal for 1998. The departmental letter (being provided under separate cover) announcing this suspension was signed

January 25, 1999, and is effective for a one-year period beginning 30 days after the date of the memorandum. **This means that the suspension applies to solicitations issued after February 24, 1999.**

Other FAR Cases:

- FAR Case 97-304, Electronic Commerce in Government Procurement. implements the FY98 Defense Authorization Act, which requires establishment of policies and procedures to employ electronic commerce in the conduct and administration of the procurement system. **Converted interim rule to final rule.**

- FAR Case 98-002, Conditionally Accepted Items. Requires that when conditionally accepting nonconforming items, amounts withheld must be at least sufficient to cover the cost and related profit to correct deficiencies and complete unfinished work. Converted proposed rule to final rule.
- FAR Case 94-792, Refinement of Commercial Rule. Provides clarifications to the Part 12 rules on procuring commercial items. **Revised proposed rule.**